IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

WP(C).No. 21482 of 2007(G)

PETITIONER:

P.K.ABDUL RAHIM, S/O.ABDU,
BISMILLAH HOUSE, POST TEMPLE GATE,
THALASSERY,KANNUR DISTRICT.

BY ADV. SRI.K.T.SHYAMKUMAR

RESPONDENTS:

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1. NEW MAHI GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY,
NEW MAHE, KANNUR DISTRICT.

2. THE SECRETARY,
NEW MAHI GRAMA PANCHAYAT,
NEW MAHE, KANNUR DISTRICT.

BY ADV. SRI.M.K.SUMOD, SC.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. M. JOSEPH, J.

W.P.C. NO. 21482 OF 2007 G

Dated this the 16th July, 2007

JUDGMENT

Case of the petitioner, in brief, is as follows:

Petitioner along with one Kunhi Kuttiali are co-owners of 31 & 1/2 cents of land in Kannur District wherein they are constructing a Shopping Complex. Their application was rejected by the Panchayat originally and there is reference to litigation. Ultimately petitioner obtained Permit. Petitioner could not complete the construction. He made application for renewal of the building Permit. The respondent Panchayat again rejected the application and the second respondent issued an order directing the petitioner to demolish certain portions of the building on the allegation that the construction was unauthorised. Petitioner filed Appeal before the Tribunal which allowed the Appeal, set aside the order of the Panchayat and directed the Panchayat to renew the building permit of the petitioner subject to the filing of an Undertaking by petitioner

against any further extension towards any side of the existing structure. Thereafter, in compliance with the order, the Panchayat renewed the building permit on 17.3.2006, but on the same day passed a provisional order under Section 406(1) of the Kerala Municipality Act, directing demolition of four pillars of the building alleging deviation from the permit, which was made absolute. Again, the matter was carried in Appeal and by Ext.P2 it was set aside. According to petitioner, the Tribunal directed the Secretary to identify the excess construction made by petitioner in deviation of the approved Plan based on measurements in the approved Site and Plan with the assistance of the Assistant Executive Engineer in the Local Self Government Department or the Public Works Department. It is his further case that pursuant to the order, two Assistant Executive Engineers prepared two Plans which show that there is no unauthorised construction into the property on the southern side as alleged by the Panchayat. It is the complaint of the petitioner that disregarding both the Site Plants, the Panchayat

obtained Site Plan from a Building Supervisor and on the basis of that, issued notice under Section 406 directing demolition of the aforesaid alleged unauthorised construction. It is stated that it is in clear violation of the order of the Tribunal. Petitioner does not seek to quash Ext.P7 Notice, but he seeks a direction to the respondents only to rely on Exts.P4 and P5 Plans for the purpose of identifying the excess construction, if any, made by the petitioner, and also a direction forbearing the respondents from relying on Ext.P8 Site Plan as it is in violation of the specific direction contained in Ext.P2.

2. Heard the learned counsel appearing for the respondent Panchayat also. He would point out that what is directed in Ext.P2 is to get a Report from a qualified Engineer, and that Ext.P7 is only a provisional notice.

3. The Writ Petition is disposed of as follows:

As Ext.P7 is only a provisional notice, it is open to the petitioner to raise all contentions available to him in law and on facts before the second respondent. Needless to say, the

respondents are bound by Ext.P2. It is open to the petitioner to contend that no reliance can be placed on Ext.P8 and the matter directed to be identified can be done only on the basis of Exts.P4 and P5 in which case the second respondent will certainly consider the same and take a decision in accordance with law.

K. M. JOSEPH, JUDGE

kbk.